

**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
OF
THE FIVE CITIES FIRE AUTHORITY**

This JOINT EXERCISE OF POWERS AGREEMENT (the “Agreement” or “JPA”) is dated this __ day of ____, 2023, for reference purposes only, and is entered into by and between the undersigned Member Agencies. The undersigned Member Agencies, the Cities of Arroyo Grande and Grover Beach, may be referred to herein individually as “Member Agency” and collectively as “Member Agencies” or “Members.”

RECITALS

A. The City of Arroyo Grande (“Arroyo Grande”) and the City of Grover Beach (“Grover Beach”), (collectively, “Member Agencies”) have the authority under California law to provide fire protection, emergency medical and related services within their respective jurisdictions.

B. Each Member Agency is a public agency authorized and empowered to contract with the other Member Agency for the joint exercise of powers under the Joint Exercise of Powers Act, Sections 6500, *et seq.*, of the California Government Code (the “Act”).

C. Each Member Agency is a local public entity, and are municipalities in contiguous geographical proximity, having similar fire protection needs, and a history of coordination and cooperation between each other.

D. By jointly exercising fire protection, emergency medical and related services, each Member Agency is able to achieve cost savings and operational efficiencies for the benefit of the persons residing in the Member Agencies’ respective service areas.

E. On June 7, 2010, the Member Agencies, desirous of improving the quality and level of fire suppression and emergency medical service delivery within their communities through the sharing of resources and expertise, entered into a Joint Powers Authority Agreement (the “JPA”) and have operated as Five Cities Fire Authority pursuant to the terms and conditions in that agreement since that time. Under that agreement, the Member Agencies have shared fire services, allowing for cost savings and operational efficiencies in providing fire services to the public. Consolidation of such fire services into a single public entity has allowed for an efficient fire protection organization significant command and administrative benefits, and a net-decrease in operational costs with a concurrent increase in operational efficiency.

F. The Oceano Community Services District was previously a member of the JPA, but voluntarily exited the JPA in June 2023 due to an inability to meet its contribution obligations under the JPA.

G. The Member Agencies have now determined the specific terms of the 2010 agreement should be amended so that this Amended and Restated Joint Powers Agreement accurately reflects the Authority's current structure and operations.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated the Member Agencies agree as follows:

1. **Recitals.** The recitals above are true and correct, and are hereby incorporated into the terms of this Agreement as though fully set forth herein.
2. **Term.** The term of this Agreement shall commence as of the date the Member Agencies have fully executed this Agreement and continue until terminated pursuant to the terms of this Agreement.
3. **Definitions.** Except where the context otherwise clearly requires, the following words and phrases shall have the meanings specified below:

“Act” shall mean the Joint Exercise of Powers Act of the State of California, commencing with California Government Code Section 6500, as now existing or as may hereinafter be amended or supplemented.

“Agreement” shall mean this Joint Exercise of Powers Agreement by and between the Member Agencies, as supplemented, amended and/or restated from time to time.

“Authority” shall mean the Five Cities Fire Authority, a joint powers authority created by this Agreement in accordance with the Act, made up of the Member Agencies, the Cities of Arroyo Grande and Grover Beach.

“Authority Area” means that geographic area encompassing the total combined jurisdictional boundaries of the Member Agencies, as lawfully changed from time to time.

“Board” or “Board of Directors” means the governing body of the Authority as established by this Agreement.

“Board member” or “Director” means a member of the governing body of the Authority.

“Fiscal Year” means July 1 of one year through June 30 of the following year.

“Formation Date” means the date when the Authority was originally created, June 7, 2010.

4. **Creation of Authority.**

4.1 **Authority Created.** The Authority was created as a public entity on June 7, 2010 as the “Five Cities Fire Authority” by operation of the prior Joint Powers Authority agreements. The Authority was and is formed pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California, which authorizes two or more public agencies, by a joint powers agreement entered into respectively by them and authorized by their legislative or governing bodies, to exercise jointly any power or powers common to the member agencies. The Authority shall be a public entity separate from the Member Agencies and is responsible for the administration of this agreement.

The debts, liabilities and obligations of the Authority shall be the debts, liabilities and obligations of the Authority alone and not of one or more of the Member Agencies.

(a) Confirmation of Authority Name. The Authority is known as the “Five Cities Fire Authority.”

4.2 Notices. Within thirty (30) days after execution of this Amended and Restated Agreement, the Authority shall cause a notice of such amendment to be prepared and filed with the office of the California Secretary of State containing the information required by California Government Code § 6503.5. Within ten (10) days after execution of this Amended and Restated Agreement, the Authority shall cause an amended statement of information concerning the Authority, as required by California Government Code § 53051, to be filed with the office of the California Secretary of State and with the County Clerk, of any change in facts as required by Government Code § 53051(a).

4.3 Authority Area. The geographic boundaries of the Authority (“Authority Area”) shall be coextensive with those of the Member Agencies, as lawfully changed from time to time.

4.4 Other Joint Powers Agreements Superseded. As of the Effective Date of this Agreement, any prior JPA agreements and/or amendments of the Five Cities Fire Authority shall have no further force and effect. Notwithstanding the foregoing, nothing in this Agreement supersedes the obligations, or otherwise absolves the former member agency of the Authority, Oceano Community Services District, of its ongoing share of unfunded CalPERS liabilities, including but not limited pension/CalPERS, accrued fringe benefits, and other liabilities incurred from Oceano’s participation in the Five Cities Fire Authority, prior to June 30, 2023 (“Liabilities”). The Authority shall enter into a standalone agreement with Oceano Community Services District with respect to those ongoing Liabilities.

4.5 Bylaws. The Board may adopt bylaws and any other regulations, policies, or procedures for the operation of the Authority not inconsistent with State constitutional, statutory, or decisional case law or the California Code of Regulations.

4.6 Purpose. The purpose of this Agreement is to jointly exercise fire protection, emergency medical, and related services. The purpose shall be accomplished, in the manner set forth in this Agreement. The Member Agencies each possess the powers necessary or convenient for the accomplishment of such purposes.

(a) Through the Authority and its governing body, the Member Agencies shall collaborate, cooperate and seek to determine ways in which the Member Agencies and the citizens residing within the Authority Area can benefit from joint services.

(b) The Authority shall provide fire protection, emergency medical, and related services within the Member Agencies.

(c) The Member Agencies shall jointly benefit through the sharing of resources, which may include but is not limited to the sharing of executive and/or administrative staff. Among other public benefits, the Member Agencies shall receive reduced costs and more efficient services through the sharing of such resources.

(d) The purposes of this Agreement shall not be construed as limiting, and the Authority, and the Board shall be authorized to further define the means by which the joint exercise of services may be accomplished.

(e) The Authority may, if approved by the Member Agencies, accept new Parties to this Agreement, and the purposes of this Agreement shall include the provision of fire protection, emergency medical, and related services within the territorial jurisdiction of any new Parties. The purposes of this Agreement shall apply to any new Parties.

5. **Powers of Authority.**

5.1 The Authority shall exercise the powers common to the Member Agencies, powers otherwise permitted under the Act, and powers necessary to accomplish the purposes of this Agreement.

5.2 The Authority is hereby authorized, in its own name, to do all acts necessary, convenient and appropriate for the exercise of the foregoing powers for the purposes set forth in this Agreement and to do any or all of the following:

(a) Setting and adopting policies, including the scope of the Management Committee's authority under Section 7.1.

(b) Adopting an annual budget.

(c) Employing personnel, consultants, advisors and independent contractors, setting parameters for labor negotiations, and ratifying labor agreements.

(d) Entering into contracts, leases and other agreements, which may include, but are not limited to, a contract for administrative and fiscal services and a contract with a Certified Public Accountant for annual audit services or mutual aid or automatic response agreements or contracts for service to other jurisdictions.

(e) Applying for; receiving and disbursing grants, loans or other aids from any private or public agency.

(f) Setting fees for service where permitted by law.

(g) Receiving, disbursing and investing funds.

(h) Purchasing and holding title to property, and obtaining leaseholds, licenses, and other interests in property, including the authority to acquire, dispose of, construct, manage, maintain or operate any building, works or improvements.

(i) Issuing revenue bonds pursuant to California Government Code Section 6540, *et seq.*

(j) Obtaining in its own name all necessary permits, licenses, opinions and rulings.

(k) Expending funds of the Authority only for the purpose of carrying out the provisions of this Agreement as they now exist or may hereafter be amended. Such powers shall be exercised in the manner provided in the Act subject only to such restrictions as set forth in this Agreement or other applicable law.

(l) Suing and being sued in its own name.

(m) Carrying out and enforcing all of the provisions of this Agreement.

(n) To incur debts, liabilities or obligations, which do not constitute a debt, liability or obligation of any Member Agency.

(o) To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations, and governmental entities, provided that the Authority consents to such gifts, contributions and donations.

(p) To fix the compensation, if any, paid to the Board of Directors, Secretary, Treasurer, Controller and Attorney, in compliance with all applicable laws.

(q) To prescribe the duties, compensation and other terms and conditions of employment of other agents, officers and employees.

(r) To adopt reasonable rules and regulations for the conduct of the day-to-day operations of the Authority.

(s) To apply for, accept, receive and disburse grants, loans and other aid.

(t) To invest money in the treasury, pursuant to Government Code section 6505.5, that is not required for the immediate necessities of the Authority, as the Authority determines advisable, in the same manner and on the same conditions as local agencies, pursuant to Section 53601 of the Government Code.

(u) To exercise any and all powers which are provided for in the Act and in Government Code section 6584 et. seq. including, without limitation Government Code section 6588, as they exist on the Effective Date of this Agreement or may hereafter be amended.

(v) Other powers and duties incidental to those enumerated herein.

5.3 Manner of Exercise of Powers. The powers of the Authority shall be limited only by the terms of this Agreement, the Act, and applicable law, as amended from time to time. The laws of the State of California applicable and common to general law cities shall govern the Authority in the manner of exercising its powers common between the cities, subject to such restrictions as are applicable to the City of Arroyo Grande in the manner of exercising such powers, as required by Government Code section 6509.

6. Governance.

6.1 Board of Directors. The Authority shall be governed by a four-member Board of Directors (collectively “Board,” individually “Board member” or “Director”). Each Member Agency may appoint Board members, as follows: two (2) elected city councilmembers, which may but is not required to include the Mayor from each Member Agency. Each of the four (4) Authority Board members, and any alternates, shall be appointed as determined by the respective Member Agencies’ City Councils and any applicable local policies. All the power and rights of the Authority shall be exercised by the Board, subject to the rights reserved by the Member Agencies as set forth in this Agreement; provided, however, that the Board may delegate such powers and authority to committees, sub-committees, the Management Committee, and others as the Board deems appropriate.

6.2 Compensation. Directors may receive such compensation from the Authority for services as may from time to time be established by the Board, subject to the limits of applicable law. Directors shall be reimbursed for necessary and actual expenses incurred in the conduct of the Authority’s official business as permitted by law and by policies adopted by the Board.

6.3 Board Officers, Alternating Member Agency Term. In the interest of full representation between the two Member Agencies, the role of Board Chair and Vice Chair shall alternate between the two Member Agencies as follows:

(a) A Board member from one of the two Member Agencies shall serve as Board Chair over a one-year term (“Chair Term”). During each Chair Term, the Vice Chair shall be selected from a different Member Agency than that of the Board Chair, ensuring the Vice Chair serves a city council that is not part of the City organization on which the Board Chair serves.

(b) Following each one-year Chair Term, the Chair and Vice Chair shall alternate between the two Member Agencies, so at all times the Board Chair and Vice Chair shall be from the separate Member Agencies.

(c) The Chair, or in the Chair’s absence the Vice Chair, shall preside at and conduct all meetings of the Board and execute agreements and other official instruments on behalf of the Authority. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair. In the absence of the Chair and the Vice Chair, the absent members may appoint a different member of the Board to serve as an alternate.

(d) The procedure for selecting the Board Chair and Vice Chair shall be set forth within the Authority’s adopted by-laws or other adopted Authority policy as soon as practical.

6.4 Meetings of the Board.

(a) *Annual Meeting.* The Board shall hold an annual meeting to review the services provided by the Authority and to consider approval of a budget, which shall be a regular meeting conducted in accordance with the provisions of the Ralph M. Brown Act, Sections 54950 et seq. of the California Government Code. The Board shall also hold regular meetings at least quarterly, on a schedule adopted pursuant to subsection 6.4(d) below. The Board may hold additional regular meetings as determined by the Board and may adopt such procedures and

resolutions for conducting such meetings and other business as the Board deems appropriate. Alternatively the Board may establish an executive or other committee to hold regular meetings.

(b) *Conduct of Meetings.* All meetings of the Board including, without limitation, regular, adjourned regular, and special meetings shall be called, noticed and conducted in accordance with the provisions of the Ralph M. Brown Act, Sections 54950 et seq. of the California Government Code.

(c) *Quorum.* A simple majority of the Board shall constitute a quorum for the purpose of transacting business. The affirmative vote of a majority of the quorum shall be required for the Authority to take any action and must include at least one affirmative vote from one Board member from each Member Agency, except: (i) where different voting requirements are provided for by applicable law or local Authority policies; and (ii) approval of budgets, issuance of any bonds, exercise of eminent domain, and incurrence of any debts, liabilities, obligations, certificates of participation or other evidence of indebtedness shall require an affirmative vote of the majority of the membership of the Board subject to any specific, adopted or applicable Authority purchasing policy. This section shall not prohibit the Board from delegating the authority to purchase goods and services, including goods and services consistent with any adopted or applicable Authority purchasing policy, specified herein.

(i) In the absence of a quorum at any meeting of the Board, a majority of the directors present, or the Chair in the absence of all directors, or the secretary may adjourn the meeting from time to time without further notice, but no other business may be transacted.

(d) *Location and Date.* The Board shall meet at the Principal Governance and Business Office as set forth in Section 9 of this Agreement, or at such other place as may be designated by the Board for its regular, adjourned regular, and special meetings consistent with this Agreement. The dates upon which, and the hour and place at which, any regular meeting shall be held shall be fixed by resolution of the Board and a copy of such resolution shall be provided to each Member Agency.

(e) *Agendas and Minutes.* The Board may select, appoint, or employ a secretary to keep or cause to be kept, at the principal business office, the principal governance office, or such other place as the Board may order, a book or electronic copy of minutes of all meetings of the Board and its committees as required by law, with the time and place of holding, whether regular or special, the notice thereof given, the names of those present at the meetings, and the proceedings thereof. As soon as practicable after each meeting, the secretary shall cause a copy of the minutes to be forwarded to each director of the Board, and to the Member Agencies. The secretary need not be a director and shall serve at the pleasure of the Board.

6.5 Board Committees

(a) *Committees.* The Board may create any standing or ad hoc committees as it sees fit. The Board may delegate to any committee the authority to approve any action or transact any business of the Board, except for business that is required by this Agreement to be approved by the full Board.

(b) *Actions of Full Board.* Approval of budgets, issuance of any bonds, exercise of eminent domain, and incurrence of any debts, liabilities, obligations, certificates of participation or other evidence of indebtedness as may be set forth in the Authority's effective purchasing policy and any legislative actions as defined by State law shall require an action of the full Board and shall not be delegated to any Board committees.

(c) *Procedures.* Except for exempt ad hoc committees, all meetings of committees including, without limitation, regular, adjourned regular, and special meetings shall be called, noticed and conducted in accordance with the provisions of the Ralph M. Brown Act, Sections 54950 et seq. of the California Government Code. Committees shall maintain minutes of their proceedings.

6.6 Bylaws. The Board may adopt bylaws and any other regulations, policies, or procedures for the operation of the Authority.

7. Executive Officers and Personnel

7.1 Management Committee. The management of the Authority shall vest in a Management Committee made up of the current City Manager for both Member Agencies or the City Managers of any Member Agencies added to this Agreement. The Management Committee shall be participants in, and oversee all non-Management Committee Executive Officers, and any Executive Officers' responsibilities as set forth in this Agreement. The Management Committee shall have the power, subject to any Board direction or Board-adopted policies:

(a) To execute any contract up to an amount consistent with any ordinance or rules adopted by the Board establishing the Authority's purchasing policies and procedures, and/or policies for capital costs of special services, equipment, materials, supplies, maintenance, or repair that involves an expenditure by the Authority within budgetary limits approved by the Board ("Board purchasing policies");

(b) To hire, terminate, and oversee the performance of the Fire Chief;

(c) To expend funds of the Authority subject to any Board purchasing policies and enter into contracts, whenever required for the immediate preservation of the public protection, health, or safety;

(d) To sell any personal property of the Authority up to a value consistent with the Board's purchasing policies;

(e) To support the Board as determined by the Board in labor negotiations and management;

(f) To administer the priorities and policies established by the Board for fire services of the Authority;

(g) To perform such other duties as may be assigned by the Board, and to report at such times and concerning such matters as the Board may require.

7.2 Executive Officers. The executive officers of the Authority shall include the Management Committee, the Chief Executive Officer, the Fire Chief, the Treasurer, the Auditor/Controller, and such other executive offices as created by the Board. All executive officers shall report to the Management Committee, and the acting Chief Executive Officer.

(a) *Chief Executive Officer.* The Chief Executive Officer will be the City Manager from the Management Committee that is employed by the same Member Agency from which the current Board Chair serves as a city councilmember or Mayor. The Chief Executive Officer shall alternate automatically, serving during the same Chair Term that the Board Chair serves on the Chief Executive Officer's Member Agency city council. The Chief Executive Officer shall carry out the decisions of the Management Committee and act as the signatory for the Authority on all actions requiring approval of the Management Committee.

(b) *Fire Chief.* The Fire Chief shall be responsible for the proper and efficient operation of the Authority as is or hereafter may be placed in his or her charge, or under his or her jurisdiction or control, pursuant to the provisions of this Agreement, or of any ordinance, resolution, bylaw or minute order of the Board. The Management Committee shall appoint and oversee the performance of the Fire Chief. The Fire Chief, as an at will employee of the Authority, shall report to the Management Committee and Chief Executive Officer, and by extension the Board, on all of the following, in a manner prescribed by the Board in consultation with the Management Committee:

(i) Plan, coordinate, supervise, and evaluate the Authority's operations, and conduct day-to-day operations of the Authority;

(ii) Supervise and manage Authority fire personnel;

(iii) Coordinate and supervise training of fire personnel;

(iv) Make recommendations to the Management Committee and Board on Authority operations;

(v) Establish policies and procedures of the Authority to implement directives from the Board and the Management Committee;

(vi) In conjunction with the Treasurer, prepare an annual budget for submission to the Management Committee and the Board;

(c) *Treasurer.* The Director of Administrative Services of Arroyo Grande shall be the Authority Treasurer. The Authority Treasurer shall perform such duties as are set forth in this Agreement and any other duties specified by the Board or as required by the Act, and shall perform the duties specified in Government Code sections 6505 and 6505.5, as amended from time to time. The Authority Treasurer shall be the depository of funds and shall have custody of all money of the Authority, from whatever source.

(i) The Board may at any time select, employ, or appoint a new or different Authority Treasurer who shall be: (1) the Treasurer or Finance Director of one of the Member Agencies; (2) a certified public accountant; or (3) such other officer or employee of one

of the Member Agencies as the Board shall deem qualified to act as the Authority Treasurer, so long as permitted by law.

(d) *Auditor/Controller.* The Authority Auditor or Authority Controller shall be the same officer or employee of the City serving as the Authority Treasurer. The Authority Auditor or Authority Controller shall perform such duties as are set forth in this Agreement and any other duties specified by the Board or as required by the Act.

(i) The Board may at any time select, employ, or appoint a new or different Authority Auditor or Authority Controller who shall be: (1) the auditor or controller of one of the Member Agencies; or (2) such other officer or employee of one of the Member Agencies as the Authority shall deem qualified to act as Authority Auditor or Authority Controller, so long as permitted by law.

(e) *Secretary.* The Board shall appoint, or designate to the Management Committee in consultation with the Fire Chief to appoint a Secretary who shall serve at the pleasure of the Board. The Secretary shall be the official custodian of records for the Authority, make all filings requested by the Board and legally required, and be responsible for agendas and meeting minutes as provided in Section 6.4(f) of this Agreement.

7.3 Official Bond. Pursuant to Government Code section 6505.1, the public officer, officers or persons who have charge of, handle or have access to any property of the Authority shall file an official bond in an amount of \$25,000, unless fixed by the Parties to this Agreement in a different amount by unanimous decision of the Board.

7.4 Other Officers and Staff

(a) *Attorney for Authority.* The Attorney for the Authority shall be appointed by the Board of Directors. The Attorney for the Authority or a designated deputy shall attend all meetings of the Board of Directors; provided, however, that the absence of the Authority Attorney shall not affect the validity of any meeting. The Attorney shall perform such other duties the Board of Directors specifies.

(b) *Officers and Professional Services.* The Board may select, appoint, or employ any other officers, or professional and expert services as may be necessary or appropriate to accomplish the purposes of this Agreement, including but not limited to, legal counsel, financial consultants, accountants, engineers, architects, contractors, appraisers and any other consultants and advisors, which may be a corporation, partnership, firm or individual. The Board may delegate to the Fire Chief or to a committee the authority to hire officers and professional services.

(c) *Employees of Authority.* Employees of the Authority are (i) those individuals employed by Arroyo Grande, but assigned to the Authority between the Authority and Arroyo Grande referenced in Exhibit A of this Agreement; and (ii) those individuals employed directly by the Authority. The Parties' governing bodies may meet in closed sessions for the purpose of providing input to the Board regarding the terms of compensation for Authority employees.

(d) *Shared Resources.* The Board may contract with a Member Agency, or its officers, to provide necessary administrative services to the Authority as appropriate. All personnel employed by the individual Member Agencies shall remain employees of their respective Member Agency unless and until the Authority affirmatively employs such personnel pursuant to its powers. No express or implied employment contract between any Member Agency employee and the Authority exists as a result of this Agreement.

7.5 Interference Prohibited. The Board and the Member Agencies shall deal with the administrative services of the Authority (which includes the Authority's Treasurer, Auditor/Controller and Secretary) only through the Management Committee who may delegate to the Fire Chief and their responsibility set forth herein, except for the purpose of inquiry. Neither the Board, the governing body of any Member Agency, nor any individual members of either shall give orders to any subordinate of the Fire Chief.

7.6 Rules and Regulations. The Board shall forthwith adopt rules and regulations and perform all other acts necessary so that the Authority may hire personnel. Existing personnel operations remain in effect and control at the time this Agreement takes effect, until such time that the Board adopts rules and regulations that augment those existing personnel operations.

8. Equipment and Facilities.

8.1 *Fire Stations and Other Real Property*

(a) *Member Agency Buildings and Structures.* Buildings and structures owned by Member Agencies may be utilized for the Authority's use, but shall remain the property of the respective Member Agency. Each Member Agency shall be responsible for the maintenance and insurance of Member Agency buildings. The Authority shall not directly own, maintain, or insure any existing building or structure, unless the Authority and a Member Agency expressly agree in writing that the Authority accepts ownership, responsibility for maintenance, or responsibility to insure a particular building or structure. Any building constructed or owned by the Authority after the Formation Date shall be the property of the Authority, and in the event of dissolution of the Authority, shall be disposed of as provided in this Agreement.

(i) *Maintenance By Members.* The respective Members owning a fire station shall be responsible for the maintenance, repair, replacement, and improvements to the building structure, mechanical systems, electrical, plumbing, and exterior infrastructure (i.e., roof coverings, driveway, etc.). The Members are not responsible for (i) the maintenance or repair of any systems that have been installed by the Authority and are unique to fire service operations (e.g., dispatch/radio systems, computer networks, etc.), and (ii) the cost of performing any such maintenance or repairs caused by the negligence of the Authority or its employees, agents, servants, licensees, contractors, or invitees.

(ii) *Maintenance By Authority.* The Authority shall be responsible for routine maintenance of fire stations, interior decorating, landscaping, and fire alarm systems. The Authority is also responsible for the maintenance, repair, replacement, and improvements of the dispatch telecommunication systems and all systems that have been installed by the Authority

which are unique to fire service operations (e.g., dispatch/radio systems, computer networks, etc.).

(b) *Contributions of Real Property.* Either Member Agency may contribute real property to the Authority for the Authority's use. The Member Agency owning the interest in the real property shall continue to own said interest, unless the Member Agencies and Authority agree otherwise. The Board and the Member Agency owning the interest shall agree on the terms of the contribution.

(c) *Lease or Purchase of Additional Stations.* The Authority shall be authorized to lease, purchase, or obtain any other interest in real property for the Authority's uses.

8.2 *Equipment and Other Personal Property*

(a) *Equipment Provided by Member Agencies.* As soon as reasonably practicable, the Authority shall inventory all equipment owned by the Member Agencies that is available for the Authority's use. All Member Agency equipment shall remain the property of that Member Agency, unless the Member Agencies otherwise agree. The Member Agency may contribute additional equipment for the Authority's use upon terms agreed between the Member Agencies and the Authority. The Authority may rent or borrow equipment from the Member Agencies for temporary use. All equipment owned by the Authority or subject to an equipment lease for financing purposes, shall remain the property of the Authority.

(b) *Acquisition of Equipment.* The Authority may acquire any equipment or other personal property for the Authority's use.

8.3 *Separate Property of the Parties.* Exhibit C, attached and incorporated by reference, establishes the property which is owned by a Member Agency and not the Authority, notwithstanding that the Authority may use that property.

9. **Principal Offices.**

9.1 **Principal Governance and Business Office.** The principal business office and governance office of the Authority at the date this Agreement is effective shall be Authority's Station 1, at 140 Traffic Way, Arroyo Grande, California, 93420, ("Principal Governance and Business Office" or "Principal Office") or as otherwise determined by the Board. The Board may change the Principal Office, from time to time, and from one location to another, within the Authority Area. Any change shall be noted by the Authority Secretary and reflected in Authority document, but shall not be considered an amendment to this Agreement.

10. **Financial Provisions.**

10.1 Administrative services shall be provided by, and allocated between the Member Agencies as shown on Exhibit A, attached and incorporated by reference to this Agreement.

10.2 Operation and capital improvements costs shall be allocated among the jurisdictions in accordance with the cost-sharing formula in Exhibit B, adopted by the Board and

the governing bodies of the Member Agencies, and attached and incorporated by reference into this Agreement.

10.3 Member Agencies will be billed quarterly by the Authority Treasurer, in accordance with the provisions of Exhibit A and B. Member Agencies agree to pay the invoices on a quarterly basis.

10.4 Capital Purchases. Capital purchases that solely benefit a Member Agency shall be funded by that Member Agency. All other capital purchases shall be funded on terms established by the Board. The funding of capital purchases that are not budgeted shall be separately approved by each Local Sub-Committee.

10.5 Budget.

(a) The Board shall initially adopt a budget within 30 days of execution of this Amended and Restated JPA. The Board shall adopt a budget for maintenance and operation costs, and costs of special services in time to allow review by the Member Agencies prior to April 30th of each fiscal year. The Authority's fiscal year shall be July 1 to June 30. Each Member Agency shall prepare its own annual budget for capital costs related to Authority services. Subject to the exception provided below in Section 10.5(b), no expenditures may be made by or on behalf of the Authority unless authorized by a budget or budget amendment approved by the Board.

10.6 Invoicing. Upon completion of the initial budget, and thereafter at such other intervals as determined appropriate by the Board, the Authority shall determine the amount of the budget expenses payable during the ensuing period pursuant to each Member Agency's share of expenses required by this Agreement, and the budget approved by the Board. The Authority shall submit to each Member Agency an invoice showing the Member Agency's share for the applicable period together with a calculation of the Member Agency's share. Each Member Agency shall pay to the Authority the amount invoiced within 30 days after the date of the invoice. Any amount not paid within 60 days of the date of an invoice shall be delinquent.

10.7 Default and Delinquency. Any Member Agency which defaults in its obligation to pay or advance any amounts due pursuant to this Agreement after such amounts have become delinquent shall be deemed to have waived and relinquished any rights and benefits it may have under this Agreement. Any defaulting Member Agency shall be liable to the Authority for interest on the unpaid amount at the rate of 10% per annum, or the maximum rate allowed by law if it is less than 10% per annum, until the overdue invoice amount is paid in full. If the Agreement is terminated, then the defaulting Member Agency shall remain liable for payment of its share of debts, liabilities and obligations under this Agreement incurred prior to the date of termination, plus interest.

10.8 Accounting. The Authority shall maintain strict accountability of all funds, receipts and expenses, and shall keep and maintain appropriate records and accounts of all funds, receipts and expenses under this Agreement in accordance with generally accepted accounting practices for California public agencies and the requirements of the Act. The Authority shall

allow any Member Agency, or any of its employees, accountants, attorneys or agents to review, inspect, copy and audit any such records and accounts.

10.9 Record of Contributions. The Authority shall maintain records of all fire prevention and suppression equipment, medical equipment, and associated property and assets contributed by each Member Agency and by the Authority, including any staff resources contributed to the Authority.

10.10 Audit. The records and accounts of the Authority shall be audited annually by an independent certified public accountant and copies of such audit reports shall be filed with the State and each Member Agency pursuant to the requirements of Section 6505 through 6505.6 of the Government Code. The audit shall conform to generally accepted auditing standards. Such report shall be filed within 12 months after the end of the fiscal year or years under examination, and no later than fifteen (15) days after receipt of such audit reports by the Authority.

10.11 Expenditures. The Board shall establish and comply with a system and procedure for the review and approval of Authority expenditures and claims and the drawing and signing of Authority warrants or checks. All expenditures shall be consistent with the approved budget, except as otherwise determined by the Board.

11. Debts, Liabilities, Obligations. Subject to all applicable laws, including but not limited to Government Code section 6508.1, all debts, liabilities, and obligations of the Authority shall be those of the Authority, and do not constitute debts, liabilities, or obligations of any one or more of the Member Agencies. The responsibilities and obligations of each Member Agency to this Agreement shall be solely as provided in this Agreement, or as provided in supplemental agreements or amendments as shall be executed by the Member Agencies. As required by law, the Member Agencies are liable for CalPERS liability of the Authority as follows:

11.1 The Authority shall use the City of Arroyo Grande's CalPERS contract for Employees of the Authority.

11.2 If a Member Agency withdraws from the Authority, the withdrawing Member Agency shall be liable for, and upon demand shall promptly pay, its share of the existing and/or contingent liabilities of the Agency as of the effective date of the withdrawal. The withdrawing Member Agency's share of liabilities shall bear the same relationship to the whole as its annual contribution for the operation of the Authority bears to the whole of all annual contributions.

11.3 If a Member Agency withdraws from the Authority, but the Authority does not dissolve or terminate, and the Authority has established a plan of periodically paying down part of its unfunded accrued pension liability ("UAPL") debt to CalPERS, the withdrawing Member Agency shall continue to be liable, and to promptly pay thereafter to Authority upon being billed, its share of the Authority's UAPL based upon its prior years of membership. The withdrawn Member Agency's share of such UAPL expense shall be determined according to the same formula used by the Authority to allocate such costs during the final year of the withdrawing Member Agency's membership.

11.4 The withdrawing Member Agency shall also be liable for any additional Authority expenses as of the effective date of the withdrawal that exclusively benefit the

withdrawing Member Agency as well as 100% of any early termination fees that accrue due to the withdrawal of the Member Agency.

11.5 Until such time that the Authority utilizes a different contract approved by its Board, if the City of Arroyo Grande dissolves, terminates, or ends its contractual relationship with CalPERS("the triggering events"), Government Code sections 6508.1 and 6508.2 will require all existing Member Agencies, and certain past Member Agencies, to each assume individual financial responsibility for its proportionate share of the UAPL then in effect. By joining Authority, each Member Agency promises and represents that upon occurrence of a triggering event: (i) it will undertake this obligation when requested by either CalPERS or the Authority; and (ii) that unless the Board determines differently, the proportionate share each Member Agency will assume shall be based upon the same formula used to determine each Member Agency's share of the Authority's last periodic UAPL payment to CalPERS in the year prior to the triggering event.

11.6 Prior to Execution. The debts, liabilities and obligations of each Member Agency in existence or accrued as of the full execution of this Agreement shall remain the debts, liabilities and obligations of that Member Agency and shall not be assumed by or transferred to the Authority. After the execution of this Agreement by both Member Agencies, however, any existing debt, liability or obligation of the Member Agencies may be expressly approved or accepted by the Authority by a formal written action of the Board.

11.7 Fire Engines 2 and 3, Equipment Lease Payments. Notwithstanding any other provisions of this Agreement to the contrary, the Parties mutually agree and understand that as a result of any dissociation, withdrawal or termination of this Agreement by a withdrawing member agency, that withdrawing member agency will not be obligated for future payment lease obligations for Engines 2 and 3 that remain in the custody, control, and possession of the Authority.

12. Indemnity and Hold Harmless; Insurance.

12.1 Indemnification of Member Agencies. The Authority shall indemnify, defend and hold harmless the Board of Directors, the individual Member Agencies, and their members, officers, directors, employees and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to this Agreement, any individual Member Agency, or their members, officers, directors, employees and agents.

12.2 Indemnification for Prior/Separate Acts. Each Member Agency (Indemnifying Member Agency) shall defend, indemnify and hold harmless the Authority, each Director, the other Member Agency, and the Authority and each Member Agency's respective Council or governing board members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind, including attorney's fees and expert's fees, arising directly or indirectly from the Indemnifying Member Agency's acts or omissions occurring prior to the effective date of the Authority's initial Effective Date of June 7, 2010, or that otherwise occur outside the scope of this Agreement.

12.3 Insurance. The Authority shall acquire insurance protection as is necessary to protect the interests of the Authority and the Member Agencies. The premiums for insurance acquired by the Authority, as well as any anticipated funds necessary to pay for self-insured retentions and deductibles for insurance, shall be determined based upon actuarial studies and included in the budget. Any adjustments to the budget to pay for insurance premiums, self-insured retentions, and deductibles shall be prepared by the Management Committee for presentation to the Board of Directors for consideration and approval.

12.4 Survival. These defense, indemnification, and hold harmless obligations shall survive and continue in full force and effect after withdrawal of any Member Agency from this Agreement or termination of this Agreement for any reason with respect to any negligent acts, errors or omissions that occurred before the date of such withdrawal or termination.

13. Termination.

13.1 Termination.

(a) When there are only two Member Agencies in the Authority, either Member Agency may unilaterally terminate the Agreement with an effective termination date of June 30 of any Fiscal Year, provided that written notice is provided to, and received by, the Authority and the other Member Agency by the terminating Member Agency no later than June 30 of the prior Fiscal Year, as expressed by vote of the governing body of the terminating Member Agency. Any terminating Member Agency shall be obligated to pay that Member Agency's contributions for the Fiscal Year ending on the effective date of termination.

(b) The Member Agencies may all jointly agree by written consent to terminate the Agreement, as expressed by resolution of the governing boards of all Member Agencies (passed by vote of the membership of the governing body of each Member Agency). Such termination shall provide for adequate time to wind-up the affairs of the Authority and distribute any assets pursuant to this Agreement. The Member Agencies shall be obligated to pay their contributions until the effective date of termination.

13.2 Disposition of Member Agencies' Property Upon Termination. Any property that was acquired by either Member Agency prior to entering this Agreement, and that is required either by this Agreement or by any subsequent act or Agreement to remain the property of the Member Agency, shall be returned to the Member Agency upon termination of this Agreement. Exhibit C lists the separate property of the Member Agencies, but a Member Agency may prove that it, and not the Authority, owns certain property by providing documentation establishing such ownership. If property is not listed in Exhibit C, and no documentation establishes ownership of that property, the property will be presumed to be owned by the Authority.

13.3 Disposition of Authority Property Upon Termination. Upon termination of this Agreement, the assets and property of the Authority shall be distributed as follows:

(a) First, if either Member Agency is in default of its obligation to pay or advance any amounts due to Authority pursuant to this Agreement, then any funds or assets of

the defaulting Member Agency shall be applied to the Authority in satisfaction of any such delinquency.

(b) Second, any other funds on hand shall be used to liquidate and wind-up the affairs of the Authority.

(c) Third, any surplus funds on hand remaining after satisfaction of subsections (a) and (b) above shall then be returned to the Member Agencies in proportion to their proportional financial contributions made to the Authority.

(d) Fourth, any property acquired by either Member Agency prior to entering this Agreement shall be returned to the Member Agency which owned the property at the Formation Date; provided, however, that if any such property has been substantially improved, repaired or modified by Authority funds, it shall be distributed pursuant to subsection (e) below.

(e) Fifth, any remaining property and assets shall be divided and distributed amongst the Member Agencies pursuant to separate agreement of the Member Agencies entered into at that time. If such subsequent agreement is not successfully negotiated and agreed to within a reasonable period of time, then the remaining property and assets shall be sold and the net proceeds from any sale shall be distributed among the Member Agencies in proportion to their financial and equipment contributions made to the Authority during the operation of this Agreement and any ancillary agreements.

14. **Conflict Resolution.** The Member Agencies agree that any and all disputes, claims or controversies between the Member Agencies arising out of or relating to performance of this Agreement, shall be resolved pursuant to the conflict resolution provisions as follows:

14.1 The Member Agencies shall first meet and attempt in good faith to negotiate and resolve any dispute arising out of or relating to this Agreement, subject to subsequent approval of any such resolution by the respective governing boards. The Member Agencies may, in each Member Agency's respective discretion, appoint either an alternative representative of the governing body or an ad hoc committee constituting less than a quorum of the governing body to meet and attempt in good faith to negotiate and resolve any dispute arising out of or relating to this Agreement, subject to subsequent approval of any such resolution by the respective governing boards.

14.2 If the matter is not resolved by negotiation pursuant to Section 14.1 above, then the Member Agencies agree that the matter shall be submitted to mediation within a reasonable period of time after receipt of a written request from one Member Agency to the other Member Agency requesting such mediation. The Member Agencies shall cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Should the Member Agencies be unable to agree upon a mediator, they shall agree upon a mediation service and shall have that service select a mediator for them. The Member Agencies agree that they shall participate in the mediation in good faith and that they will share equally in the costs of mediation. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Member Agencies, their agents, employees, experts and attorneys, and by the mediator or any employees of the mediator, are confidential, privileged and inadmissible for any

purpose, including impeachment, in any litigation or other proceeding involving the Member Agencies, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

14.3 If the matter is not resolved by negotiation pursuant to Section 14.1 above, or by subsequent mediation pursuant to Section 14.2 above, then the Member Agencies may submit the matter to binding or non-binding arbitration, but only if both Member Agencies agree to submit the particular controversy to arbitration. Neither Member Agency shall have a right to submit any controversy to arbitration without the other Member Agency's consent.

15. **New Members.**

15.1 **Addition of New Members.** The Authority may set the terms and conditions for admitting new members (a "New Member Agency") that it deems appropriate either by amendment to this Agreement or the Bylaws. New members may only be admitted with unanimous approval of the Board and the governing bodies of each Member Agency. Approved new Members shall execute a copy of this Agreement, as amended, and shall thereafter be subject to all terms and conditions contained herein.

15.2 **Construction.** The terms of this Agreement shall be construed so as to apply to new Members the same as to the initial Member Agencies to the Agreement. New Members shall have the rights and obligations accorded to "Members" or "Member Agencies (whether singular or plural) under this Agreement.

15.3 **Cost Share.** Prior to the acceptance of any New Member Agency, the proposed New Member Agency shall pay an amount, as determined by the Board, for the proposed New Member Agency's fair share of any start-up costs or other initial investments incurred by the Authority to admit the New Member Agency.

15.4 **Funding of Services.** The Authority shall not provide any fire protection or related services within a New Member Agency's geographic area unless and until the New Member Agency deposits sufficient funds to cover the estimated costs of services for a period of time as determined by the Board, to be not less than six (6) months.

16. **Withdrawal.** Notwithstanding any other provision of this Agreement, any Member Agency may withdraw from the Authority by providing the Authority with written notice of its intent to withdraw consistent with Section 13.1 of this Agreement, Termination. This includes providing written notice no later than June 30 of any Fiscal Year, a continuing obligation to pay that Member Agency's contributions for the Fiscal Year ending on the effective date of termination, and following Section 13.1.b. for the procedure where the Members Agency may jointly agree by written consent on the withdrawal of a Member Agency. A withdrawal from the Authority constitutes a withdrawal of that Member Agency's representatives from the Board of Directors.

17. **Effect of Withdrawal.** The withdrawal of a Member Agency shall not terminate its responsibility to contribute its share of any obligation incurred by the Authority, including amounts determined by the Board for (1) liabilities and claims accrued during the time the agency was a Member Agency or (2) budgeted expenses for the Fiscal Year in which notice of

intent to withdraw is given. Except as the withdrawing Member Agency may agree, in writing, with the Board, the withdrawing Member Agency shall automatically relinquish all rights as a Member Agency under this Agreement, on the effective date of the withdrawal. Upon termination of this Agreement, a Member Agency that has withdrawn will be treated like all other Member Agencies for purposes of disbursement of Authority assets, unless otherwise agreed in writing and the remaining Member Agencies of the Authority can maintain the name "Five Cities Fire Authority."

18. **Conflict of Interest Code.** The Authority adopts as its Conflict of Interest Code the Fair Political Practices Commission Model Conflict of Interest Code with appropriate substitution regarding references to the Board and Authority officers.

19. **General Provisions.**

19.1 **Integration.** This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the Member Agencies concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in this Agreement.

19.2 **Headings.** The section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

19.3 **Consents.** Whenever any consent and/or approval is required under this Agreement from any Member Agency, said consent and/or approval shall not be unreasonably withheld.

19.4 **Construction and Interpretation.** It is agreed and acknowledged by the Member Agencies that this Agreement has been arrived at through negotiation, and that each Member Agency has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Member Agency shall not apply in construing or interpreting this Agreement.

19.5 **Waiver.** The waiver at any time by any Member Agency of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

19.6 **Remedies Not Exclusive.** The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by either Member Agency of any remedy under this Agreement shall be without prejudice to the enforcement of any other remedy.

19.7 **Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

19.8 **Successors and Assigns.** Except as otherwise provided by law, the rights and duties of the Member Agencies under this Agreement shall not be assigned or delegated without

the prior written consent of the other Member Agency. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect, and may be subject to such additional reasonable conditions of approval imposed by the Member Agency approving the assignment or delegation.

19.9 No Third Member Agency Beneficiaries. This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the Member Agencies, and their permitted successors, transferees and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

19.10 Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved by the governing board of each Member Agency and executed by both Member Agencies pursuant to the terms and conditions of this Agreement.

19.11 Governing Law and Venue. Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of San Luis Obispo shall be the venue for any litigation concerning the enforcement or construction of this Agreement.

19.12 Attorney Fees. In the event any legal action is brought to enforce or construe this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees, expert witness and consulting fees, litigation costs and costs of suit.

19.13 Notice. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail to the City Clerk and City Attorney of each Member Agency.

Any notice or other communication served by personal delivery shall be deemed received when actually delivered. Any notice or other communication shall be deemed as received three days after deposit in United States mail, postage prepaid, return receipt requested.

19.14 Counterparts. This Agreement may be executed by the Member Agencies in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the Member Agencies hereto have executed this Joint Exercise of Powers Agreement as of the date last executed as set forth below.

CITY OF GROVER BEACH

By _____
Mayor,

Dated _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF ARROYO GRANDE

By _____
Mayor

Dated _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

City Attorney